

REMARKS

Applicants request favorable reconsideration of this application in view of the following remarks. Claims 1-12, 23, and 24 were pending in the application and were rejected in the Office Action. Applicants have made no amendments and, therefore, respectfully traverse each of the objections and rejections set forth in the Office Action mailed June 18, 2004.

1. Objection to Drawing Corrections and Claim Rejections under 35 U.S.C. § 112, ¶ 1

The Examiner objected to the proposed drawing change filed on March 25, 2004 for allegedly introducing new matter. Similarly, the Examiner rejected claims 1-7, 12, 23, and 24 under 35 U.S.C. § 112, ¶ 1 as allegedly containing subject matter that “was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time of the application was filed, had possession of the claimed” invention. For the following reasons, Applicants respectfully disagree.

As originally filed, the paragraph on page 6, lines 26-34 provided (*italic emphasis added*):

The above described apparatus is used as follows – each of the receptacles 22, 23 is filled with any desired grape material, (e.g. fruit, pulp, juice, pre-drained skins or fortifying beverage) with the containers 22, 23 in the lowered position L. The receptacles are filled through the top openings 26, 27. The receptacles may be fitted with *internal screens or filters* (not shown) so that if the *receptacles are filled with material* which is a mixture of liquid and solid (e.g. pulp) *the liquid drains through to the bottom of the receptacle and can be removed from the receptacle by pumping out through a lower aperture (not shown) in the receptacle*, if desired.

Preliminarily, the “lower aperture” was shown in the originally filed drawings; adding a reference numeral “28” for this item is clearly not new matter. Further, the addition of the internal screen to the Figures 1 and 2 and to claim 1 (*i.e.*, the claim from which claims 2-7, 23, and 24 depend) and 12 was proper because the above quoted language clearly dictates that the screen must be in a lower portion of the receptacle and above the lower aperture. This arrangement is required so that the receptacle may be “*filled* with a mixture of liquid and solid” while enabling the liquid, which has moved “to the bottom of the receptacle”, to be removed by means of the lower aperture.

Consistent with the M.P.E.P. § 2163(I)(b), the implicit teaching of the screen’s location provides the necessary support for the explicit limitation now claimed (and shown in Figures 1 and 2). Specifically, § 2163(I)(b) states (with bold emphasis added): “While there is no *in haec verba* requirement, newly added claim limitations must be supported in the

specification through express, **implicit**, or inherent disclosure.” Further, the “fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed.” *Id.* (citing *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991)). Clearly, one of ordinary skill in the art, upon reading the original disclosure, would understand that the screen was to be positioned at a lower end of the container and above the lower aperture.

Accordingly, for at least the aforementioned reasons, no new matter was presented. As a result, both the objection to the previously filed drawing change and the rejection of claims 1-7, 12, 23, and 24 under § 112, ¶ 1 should be withdrawn.

2. Rejections of Apparatus Claims 1-7, 23, and 24

a. Taylor: Claims 1-5 and 24

The Examiner rejected claims 1-5 and 24 under 35 U.S.C. § 102(b) as allegedly being anticipated by AU 35,291 (“Taylor”). For the following reasons, Applicants respectfully traverse this rejection.

As previously presented, claim 1 (*i.e.*, the claim from which claims 2-5 and 24 depend) recites an apparatus for handling grape material that includes, among other possible things (*italic emphasis added*):

- a support structure;
- a receptacle configured to contain a grape material, the receptacle comprising:
 - a top opening at an upper end of the receptacle;
 - a lower outlet at a lower end of the receptacle; and
 - a screen in a lower section of the receptacle,wherein the receptacle is rotatable, about a pivotal connection, with respect to the support structure; and
- an actuator for rotating the receptacle in a controlled manner from an upright position in which a fluid may be contained in the receptacle to a tipped position in which the contents of the receptacle *may be emptied via the top opening*.

In rejecting claims 1-5 and 24, the Examiner states that Taylor teaches “an actuator (6) for rotating the receptacle in a controlled manner from an upright position in which a grape fluid may be contained in the receptacle to a tipped position in which the contents of the receptacle may be emptied via the top opening.” As hereafter explained, Applicants respectfully disagree.

Assuming, *arguendo*, that the rams 6 shown in Figures 1 and 3 of Taylor are analogous to the actuator recited in claim 1, it is clear that the rams 6 do not rotate the bin 2

(i.e., the receptacle) such that the grape material contained therein “is emptied via the top opening,” as recited in claim 1. Rather, the grape material is fed to the auger 4, i.e., the only structure in Taylor analogous to the “lower outlet” recited in claim 1. Moreover, this is not merely a matter of semantics as the auger 4 may contain a screen that the Examiner analogizes to the “screen in a lower section of the receptacle” recited in claim 1. Accordingly, as Taylor fails to teach or suggest emptying via a top opening, Taylor fails to teach or suggest at least the actuator recited in claim 1.

As Taylor fails to teach or suggest each of the limitations of claim 1, Taylor can not be used to reject claim 1, or any claim dependent thereon, under 35 U.S.C. § 102(b). Moreover, as claims 2-5 and 24 depend from claim 1, each of these dependent claims is also allowable over Taylor, without regard to the other patentable limitations recited therein. Therefore, Applicants respectfully request a withdrawal of the rejection of claims 1-5 and 24 under § 102(b) for anticipation by Taylor.

b. Taylor and either McKenzie or Kataoka: Claims 6 and 7

The Examiner rejected claims 6 and 7 under 35 U.S.C. § 103(a) as allegedly being obvious when considering Taylor in view of U.S. Patent No. 6,568,567 (“McKenzie”). In the alternative, claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious when considering Taylor in view of U.S. Patent No. 4,511,009 (“Kataoka”). For the following reasons, Applicants respectfully traverse each of these rejections.

As previously discussed, Taylor fails to teach or suggest at least the actuator recited in claim 1. Neither McKenzie nor Kataoka cures this deficiency because both references, like Taylor, fail to teach or suggest emptying the contents thereof via a top opening. Accordingly, as neither the combination of Taylor and McKenzie nor the combination of Taylor and Kataoka teaches or suggests each of the limitations of claim 1, neither combination can be used to reject claim 1, or any claim dependent thereon, under 35 U.S.C. § 103(a). Moreover, as claims 6 and 7 depend from claim 1, each of these dependent claims is also allowable over the combinations of (a) Taylor and McKenzie and (b) Taylor and Kataoka. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 6 and 7 under 35 U.S.C. § 103(a).

c. Wettlaufer: Claims 1-3, 6, 7, and 23

The Examiner rejected claims 1-3, 6, 7, and 23 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,275,097 (“Wettlaufer”). For the following reasons, Applicants respectfully traverse this rejection.

Wettlaufer does not teach or suggest a receptacle for containing grape material that has a top opening, a lower outlet, and a screen. The reference is deficient because the hopper 152 is not analogous to the receptacle. Rather, (a) it is a funnel and, therefore, cannot serve as a receptacle “for containing grape material”; and (b) it lacks a screen. The only structures in Wettlaufer that are analogous to the screen recited in claim 1 are the filter bag assemblies 102 having sides 104, 106 made of a filtering cloth. The bag assemblies 102 are not, however, part of the hopper 152 and are instead positioned below the hopper 152. Accordingly, for at least these reasons Wettlaufer fails to teach or suggest at least the receptacle recited in claim 1.

As Wettlaufer fails to teach or suggest each of the limitations of claim 1, it can not be used to reject claim 1, or any claim dependent thereon, under 35 U.S.C. § 102(b). Moreover, as claims 2, 3, 6, 7, and 23 depend from claim 1, each of these dependent claims is also allowable over Wettlaufer, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 1-3, 6, 7, and 23 under § 102(b) for anticipation by Wettlaufer.

d. McClain: Claims 1-5

The Examiner rejected claims 1-5 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,664,791 (“McClain”). For the following reasons, Applicants respectfully traverse this rejection.

As previously presented, claim 1 (*i.e.*, the claim from which claims 2-5 depend) recites an apparatus for handling grape material that includes, among other possible things (*italic emphasis added*):

- a support structure;
- a receptacle configured to contain a grape material, the receptacle comprising:
 - a top opening at an upper end of the receptacle;
 - a lower outlet at a lower end of the receptacle; and
 - a screen in a lower section of the receptacle,wherein the receptacle is rotatable, about a pivotal connection, with respect to the support structure; and
- an actuator for rotating the receptacle in a controlled manner from an upright position *in which a fluid may be contained* in the receptacle to a tipped position in which the contents of the receptacle may be emptied via the top opening.

In rejecting claim 1, the Examiner analogizes the hopper 31 in McClain to the recited receptacle. For the following reasons, Applicants respectfully disagree with this analogy. Specifically, claim 1 recites that “*fluid* may be contained” in the receptacle, when the receptacle is in an upright position. By way of contrast, the hopper 31 in McClain, which

serves as a funnel, is incapable of containing a fluid. *See, e.g.*, col. 3, lines 1-22. Moreover, the hopper 31 is even incapable of holding soil, *i.e.*, the material that McClain isolates. Accordingly, McClain fails to teach or suggest at least the receptacle recited in claim 1.

As McClain fails to teach or suggest each of the limitations recited in claim 1, McClain can not be used to reject claim 1, or any claim dependent thereon, under 35 U.S.C. § 102(b). Moreover, as claims 2-5 depend from claim 1, each of these dependent claims is also allowable over McClain, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 1-5 under § 102(b) for anticipation by McClain.

3. Rejection of Method Claims 8-12

a. Wettlaufer: Claims 8-10

The Examiner rejected claims 8-10 under 35 U.S.C. § 102(b) as allegedly being anticipated by Wettlaufer. For the following reasons, Applicants respectfully traverse this rejection.

As previously presented, claim 8 (*i.e.*, the claim from which claims 9 and 10 depend) recites a method of processing bulk quantities of grape material. This method includes, among other possible steps (*italic emphasis added*):

- i) supplying grape material to a bulk receptacle;
- ii) allowing juice to flow from the grape material;
- iii) extracting the juice from the bulk receptacle via a lower outlet in the bulk receptacle;
- iv) *tipping the bulk receptacle; and*
- v) ejecting the remaining grape material through a top opening in the bulk receptacle for further processing.

As hereafter explained in detail, Wettlaufer fails to teach or suggest such a method.

Contrary to the limitations of claim 8, Wettlaufer fails to teach or suggest at least step “iv) tipping the bulk receptacle.” Specifically, although Wettlaufer teaches tipping troughs 178, 180 (as shown in Figure 4), these troughs do not have lower outlets through which the juice is extracted in the preceding step, *i.e.*, “iii) extracting the juice from the bulk receptacle via a lower outlet in the bulk receptacle.”

As Wettlaufer fails to teach or suggest at least the aforementioned limitation of claim 8, Wettlaufer can not be used to reject claim 8, or any claim dependent thereon, under 35 U.S.C. § 102(b). Moreover, as claims 9 and 10 depend from claim 8, each of these dependent claims is also allowable over Wettlaufer, without regard to the other patentable limitations

recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 8-10 under § 102(b).

b. Taylor: Claims 8, 9, 11, and 12

The Examiner rejected claims 8, 9, 11, and 12 under 35 U.S.C. § 103(a) as allegedly being obvious in view of Taylor standing alone. For the following reasons, Applicants respectfully traverse this rejection.

As previously presented, claim 8 (*i.e.*, the claim from which claims 9, 11 and 12 depend) recites a method of processing bulk quantities of grape material. This method includes, among other possible steps (*italic emphasis added*):

- i) supplying grape material to a bulk receptacle;
- ii) allowing juice to flow from the grape material;
- iii) extracting the juice from the bulk receptacle via a lower outlet in the bulk receptacle;
- iv) tipping the bulk receptacle; and
- v) *ejecting the remaining grape material through a top opening in the bulk receptacle for further processing.*

As hereafter explained in detail, Taylor fails to teach or suggest such a method.

Contrary to the limitations of claim 8, Taylor fails to teach or suggest at least step “v) ejecting the remaining grape material through a top opening in the bulk receptacle for further processing.” In making this rejection, the Examiner admits this deficiency by stating that Taylor does not specify “that the remaining grape material which doesn’t pass through the screen and auger, is removed through the top opening.” To compensate for this shortcoming, it is asserted that “as the top opening of Taylor et al is large and easy to access, using this opening would have been the obvious method of removing the excess material.” As this is an improper justification for obviousness, Applicants respectfully traverse this rejection.

Specifically, M.P.E.P. § 2143.01 provides (*with underline emphasis added*): “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In this case, the explicit operation set forth in Taylor is for all of the grape material be removed via the auger 4, 14 at the lower end of the bin 3, 13. By modifying the explicit operation set forth in Taylor to justify an obviousness rejection of the method recited in claim 8, the Examiner is improperly convening the Patent Office’s rules regarding obviousness. Clearly, such a rejection is improper and, therefore, should be withdrawn.

For at least the aforementioned reasons, Taylor fails to teach or suggest each of the limitations of claim 8. As a result, Taylor can not be used to reject claim 8, or any claim

dependent thereon, under 35 U.S.C. § 103(a). Moreover, as claim 9, 11, and 12 depend from claim 8, each of these dependent claims is also allowable over Taylor, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 8, 9, 11, and 12 under § 103(a).

c. Taylor and Kataoka: Claim 10

The Examiner rejected claim 10 under 35 U.S.C. § 103(a) as allegedly being obvious when considering Taylor in view of Kataoka. Applicants respectfully traverse this rejection.

As previously discussed, contrary to the limitations of claim 8 Taylor fails to teach or suggest at least step “v) ejecting the remaining grape material through a top opening in the bulk receptacle for further processing.” Kataoka fails to cure this deficiency. Specifically, with respect to the prior art shown in Figure 1, Kataoka teaches that the subject matter weighed by the combinatorial weighing apparatus is discharged through a lower end of the weighing hopper 8 and into collecting tube 13. *See* Kataoka at col. 1, line 63-66; col. 2, lines 1-19. Similarly, with respect to the embodiment shown in Figure 2 and 3, the weighed articles 25 “fall onto the collecting conveyor” via a lower outlet. *See id.* at col. 4, lines 42-55. As a result, Kataoka teaches away from removing anything via “a top opening” and, therefore, fails to cure the deficiencies of Taylor.

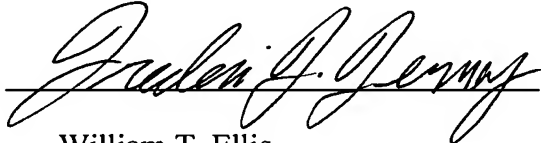
As the combination of Taylor and Kataoka fails to teach or suggest at least the aforementioned limitation of claim 8, the combination can not be used to reject claim 8, or any claim dependent thereon, under 35 U.S.C. § 103(a). Moreover, as claim 10 depends from claim 8, this dependent claim is also allowable over the combination of Taylor and Kataoka, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claim 10 under § 103(a).

CONCLUSION

For the aforementioned reasons, claims 1-12, 23, and 24 are now in condition for allowance. A Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact the undersigned if such communication would expedite the prosecution of the application.

Respectfully submitted,

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